

APPLICATION NO.

10/757,692

UNITED STATES PATENT AND TRADEMARK OFFICE

FILING DATE

01/14/2004

06/15/2005

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Licata & Tyrrell P.C.

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SALVOZA, M FRANCO G

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PAPER NUMBER

1648

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

FIRST NAMED INVENTOR

Walter Gerhard

Office Action Summary Examiner		Application No.	Applicant(s)		
M. Franco Salvoza	Office Action Commence	10/757,692	GERHARD ET AL.		
The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE £ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Letrevious or term ray be exhibited used the provided used for the provided or reply as pendified above is use sharthing (30 days a reply within the statistic provided used to reply and used to the communication. Failve to reply within the set or obtained protein of reply with, by adultation, pendified above the set of the communication. Failve to reply within the set or obtained protein of reply with, by adultation provided in the provided of the communication. Failve to reply within the set of obtained protein of the provided provided provided the provided provided provided the provided	Oπice Action Summary	Examiner	Art Unit		
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. sete SIX (8) MONTHS from the mailing date of this communication. If the period for epily section above, the maximum statutory period will apply and will expire SIX (8) MONTHS from the mailing date of this communication. If the period for epily section date the shart membrane statutory period will apply and will expire SIX (8) MONTHS from the mailing date of this communication. If MO period for reply is specified above, the maximum statutory period will apply and will expire SIX (8) MONTHS from the mailing date of this communication. And the statution of the statutio					
THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be autisted under be provisions of 37 CPR 1.13(a). In no event, however, may a reply be finely filed after SIX (i) MONTHS from the mailing date of this communication. Failure for reply within the set or extended period for reply will be trained by the communication. Failure for reply within the set or extended period for reply will be trained by the communication by the communication of the communication of the communication. Failure for reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply recent by the Office and the provision after the mailing date of this communication, even if simply filed, may reduce any searned plaint term adjustment. Set 37 CPR 1.704(b). Status 1) Responsive to communication(s) filed on 1/114/2004. 2a) This action is FINAL. 2b This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-15 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5b Claim(s) is/are allowed. 5claim(s) is/are allowed. 5claim(s) is/are allowed. 5claim(s) is/are subjected to. 3claim(s) 1-15 are subject to restriction and/or election requirement. Application Papers 9) The drawing(s) field on is/are: a) accepted or b) objected to by the Examiner. Application Papers 10) The drawing(s) field on is/are: a) accepted or b) objected to by the Examiner. Application papers 11) Calim(s) Set of the priority documents have been received. 2claim(s) Set of the contributed control of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received.					
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12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) 5) Notice of Informal Patent Application (PTO-152)	Priority under 35 U.S.C. § 119				
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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7, drawn to a multiple antigenic agent and a composition comprising it, classified in class 424, subclass 184.1.
- II. Claims 8-15, drawn to a method for preventing or treating a viral infection classified in class 424, subclass 184.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case a method of preventing or treating a viral infection can use materially different products such as pharmaceutical compositions, antibodies, virus vector vaccines, attenuated vaccines, subunit vaccines, and DNA vaccines. The inventions are therefore distinct.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Art Unit: 1648

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Franco Salvoza whose telephone number is (571) 272-8410. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (571) 272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Franco Salvoza

Patent Examiner

JAMES HOUSEL

SUPERVISORY PATENT EXAMINER

TECHNOLOGY CENTER 1600